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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-41
33 Progress Avenue
Springfield, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Springfield Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the John Boyle O'Reilly Club (hereinafter referred to as the "Appellant"). The building, which is the subject of the order, is located at 33 Progress Ave., Springfield, MA.

B) Procedural History

By written notice dated April 4, 2005, the Springfield Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 33 Progress Ave., Springfield, MA. The Appellant filed an appeal of said order on May 20, 2005. The Board held a hearing relative to this appeal on November 9, 2005. The hearing was continued for further documentation.

The Board held a second hearing relative to this appeal on January 11, 2006 at the Department of Fire Services, Stow, Massachusetts. The Appellant was represented by Attorney Daniel M. Shea, Mary M. Quinn, President, John Boyle O'Reilly Club, and Phil McBride, Chairman of the Club's Building Fund. The Springfield Fire Department was represented by District Chief John F. Cossaboom.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Chief Thomas Coulombe, Alexander MacLeod, and Peter E. Gibbons. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Springfield Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal by Appellant
2. Written Statement in Support of Appeal
3. Order of Springfield Fire Department
4. 1st Notice of Hearing to Appellant
5. 1st Notice of Hearing to Springfield Fire Department
6. 2nd Notice of Hearing to Appellant
7. 2nd Notice of Hearing to Springfield Fire Department
8. – No exhibit –
9. Certificate of Inspection with July 12, 2005 expiration date
10. Certificate of Inspection with November 14, 2006 expiration date
11. Amended Petition
12. Building Department tracking card
- 13A. Report by Brian Gore
- B. Quotation
- C. Certificate of Installation
- D. Photographs of Fire Protection System
- E. Proposal
- F. Photographs of Exterior
- G. Photographs of Interior
- H. Photographs of Banquet Hall
- I. Photographs of Downstairs bar
- J. Photographs of Rear exit
- K. Rental Agreement
- L. Events List

E) Subsidiary Findings of Fact

- 1) By Notice dated April 28, 2005 the Springfield Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 33 Progress Ave., Springfield, MA. in accordance with the provisions of M.G.L. c. 148, s.26G1/2. The Appellant timely filed an appeal of said order on May 20, 2005. After appropriate notice, the Board held a hearing relative to this appeal on November 9, 2005, at the Department of Fire Services, Stow, Massachusetts. The hearing was continued until January 11, 2006, for further information.
- 2) The subject building is a free standing single story structure located in an industrial /commercial area of the city. The building is occupied by the John Boyle O'Reilly Club which is a social club used by its members and guests for a wide variety of different social events.

Representatives for the Appellant testified that the club has approximately 550 members who pay dues. The building houses a function hall on the ground floor level and a lounge or bar area in the basement portion of the building.

- 3) According to the current Certificate of Inspection issued by the Springfield Building Department, the building is classified as an “A-2,” Assembly Use Group with a total capacity of 364 persons. Although there was no separate capacity listed on the current Inspection Certificate for portions of the building, a previous document from the city which tracks building occupancies indicated the capacity of the basement lounge/bar area to be 155 persons and the ground floor function/lounge area to be 209 persons. The Appellant further testified that the facility has a full club license.
- 4) The representative for the Springfield Fire Department, Chief Cossaboom, testified that both areas of the facility, the basement bar and ground floor function hall, have a capacity of 100+ persons. He also stated that he issued an order to install sprinkler for the entire building under the provisions of M.G.L. c.148, s.26G1/2 since there are no windows in the basement bar area, no central fire alarm system, and he has personally witnessed occasions when the bar has been overcrowded. The Chief also mentioned that he has heard complaints from other members of his fire department who have been at the facility on their personal time, and indicated that there was such severe overcrowding that they felt “crushed” inside the facility. Chief Cossaboom also was very concerned that the front exit of the building was a narrow area and would be difficult for patrons in an overcrowding situation.
- 5) In support of the appeal, the attorney for the Appellant stated that they believed the facility should be exempt since it is a private club and not a place of public assembly like a typical bar, which is open to the general public. He indicated that patrons who wished to visit the basement members lounge area or the ground floor lounge/function area are supposed to sign a logbook and/or are sponsored by a member. The Attorney referenced case law, which interpreted the applicability of the Commonwealth’s non-smoking requirements as applied to private clubs.
- 6) The representatives for the Appellant indicated that the function hall area is routinely and regularly rented to members, persons sponsored by members and to the general public for a variety of different events and that capacity limits are agreed upon prior to the event. There was testimony which indicated that tickets are often sold to members of the general public at large for some of these events. The Appellant indicated that there is no person designated by the club for crowd control but indicated that the bartenders are instructed to monitor the occupancy to avoid overcrowding.
- 7) Testimony indicates that the function hall has full lounge/service bar and a dance floor area. The lights are capable of being dimmed. The tables and chairs are not affixed. There was testimony that many of the functions are finished by 11:00 p.m. However there was also testimony indicating that the club’s liquor license allows the establishment to legally remain open until 2:00 a.m.
- 8) The basement bar/lounge area consists of a large bar, bar chairs, and small lounge type tables and chairs. There are several televisions. The bar keeps regular daily hours opening at approximately 1:00 pm for the service of alcoholic beverages to club members and their guests.

The bar usually serves only light bar snacks if at all. Guests who attend functions in the function hall area are routinely allowed to visit and order alcoholic beverages in the basement bar. On occasions, particularly when there is no bartender in the function hall, patrons can visit the members basement bar area and order drinks.

- 9) Documents and testimony indicates that the function hall is routinely and regularly used during the year for a substantial variety of different social activities. Such activities include, but are not limited to: Fundraisers, banquets, dinner dances, holiday, graduation, retirement and birthday parties, bridal and baby showers, Jack and Jill parties and stag parties. Many of these events feature live or recorded music for dancing purposes or other similar entertainment. Such events are in addition to club organizational meetings, Irish dance lessons and luncheon and breakfast events. It appears that a number of these events involve a meal which could be considered the primary attraction. However, there was testimony and documentation presented which indicates that a significant number of these events do not feature meals.
- 10) The representatives of the Appellant testified that it would be a financial burden for the club to install a sprinkler system. They indicated that preliminary estimates to install such an adequate system ranged in the \$45-\$50,000 range. The appellant failed to provide any documentation to support the cost estimate. No alternative or modified sprinkler installation information was provided for the Board's consideration.
- 11) It was the opinion of the representatives of the Appellant that the club is safe due in part to updated exits signs as well as new exhaust hoods, exhaust fans, and new fire suppression systems recently installed in the kitchen.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: "every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 3) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 4) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this law, M.G.L. c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub

fire, which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:

- a) No theatrical stage accessories other than raised platform;
- b) Low lighting levels;
- c) Entertainment by a live band or recorded music generating above normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

Based upon the testimony at the hearing, this building and the ground floor function hall in particular, is used for many different types of social events. This area is clearly, routinely and regularly used for dancehall and/or nightclub and “A-2 like” activities” described in this Board’s memorandum dated 1-10-05. A significant number of the events feature live or recorded music for dancing purposes. Testimony indicated that some of these events involved incidents of concentrated occupancy impeded and/or blocked egress and a lack of control over attendance.

Under certain circumstances the Board has not required the installation of a sprinkler system in a place of assembly, which provides facilities for “organized private dining events”. However, based upon the existing use characteristics of this building, it clearly does not have the specific and limited characteristics that are needed to be considered a facility used for “organized private dining events”.

- 5) With respect to the bar/lounge area in the basement portion of the building, the Appellant did not provided any reasonable evidence which would support a conclusion that this portion of the building is any thing else other than a “bar” with a capacity of 100 persons or over. It is therefore within the clear intent of sprinkler requirements of M.G.L. c. 148, s.26G1/2.

- 6) Appellant's argument that the use of this building is limited to "members only" and is therefore not a "public assembly" within the meaning of the statute has no basis in fact or law. There was ample testimony to conclude that organization members, as well as non-members and the public at large, routinely rent out and/or attend events at this location. Appellant's argument references interpretive case law relative to the statutory prohibition with respect to smoking. It appears that such "no smoking" statutes contain specific language, which may preclude the application of such law to such private "members only" organizations. However, such an exemption does not exist in M.G.L. c. 148, s.26G1/2. However, to the contrary, the Board notes that the State Building Code (6th Edition), in section 780 CMR 303.1, dealing generally with Assembly Use Groups, clearly states that such Assembly Use Groups includes: "All structures which are designed or occupied for the gathering together of persons for the purposes such as civic, social or religious functions...".

G) DECISION AND ORDER

After a careful review of all the evidence presented and based upon the aforementioned findings and reasoning, the Board hereby determines that the building located at 33 Progress Ave., Springfield, MA. is a public assembly with a legal capacity of 100 or more persons and is currently used or designed for those purposes within scope of M.G.L. c. 148, s.26G1/2. Accordingly, the Order of the Springfield Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 is hereby affirmed. An adequate sprinkler system shall be installed in accordance with statutory timeline as follows:

1. The submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006); and
2. Complete installation within 3 years of the effective date of the act (by November 15, 2007).

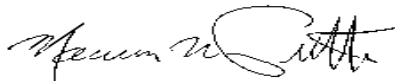
H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Paul Donga	In favor
Chief Thomas Coulombe	In favor
Alexander MacLeod	In favor
Peter E. Gibbons	In favor

I) **Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,

A handwritten signature in black ink, appearing to read "Maurice Pilette", written in a cursive style.

Maurice Pilette, P.E.. Chairman

Dated: February 14, 2006

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO: Attorney Daniel M. Shea, Morisi & O'Connell, 155 Maple Street, Suite 300, Springfield, MA 01105 and by **1st CLASS MAIL, POSTAGE PRE-PAID, TO:** District Chief John F. Cossaboom, Springfield Fire Department, 605 Worthington Street, Springfield, Massachusetts 01105-1112.